

(22,807)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 731.

CHARLES E. MYERS AND A. CLAUDE KALMEY,
PLAINTIFFS IN ERROR,

vs.

WILLIAM H. HOWARD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MARYLAND.

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1 UNITED STATES OF AMERICA,
District of Maryland, To wit:

At a Circuit Court of the United States in and for the Maryland District, Begun and Held at the City of Baltimore, on the First Monday in November (Being the Seventh Day of the Same Month), in the Year of Our Lord One Thousand Nine Hundred and Ten.

Present:

The Honorable Thomas J. Morris, Judge Maryland District.
John C. Rose, Judge Maryland District.
John Philip Hill, Esq., Attorney.
George W. Padgett, Esq., Marshal.
Arthur L. Spamer, Clerk.

Among others were the following proceedings, to wit:

At Law.

WILLIAM H. HOWARD

vs.

CHARLES E. MYERS and A. CLAUDE KALMEY.

2 *Declaration.*

Filed July 30, 1909.

In the Circuit Court of the United States for the District of Maryland.

WILLIAM H. HOWARD

vs.

CHARLES E. MYERS and A. CLAUDE KALMEY.

Declaration.

William H. Howard, by J. Wirt Randall, Edgar H. Gans, Edwin G. Baetjer and Charles J. Bonaparte, his attorneys, sues Charles E. Myers and A. Claude Kalmey, in this his suit of a civil nature at Common Law where the matter in dispute exceeds, exclusive of interest and costs the sum or value of Two Thousand Dollars and arising under the Constitution and laws of the United States.

For that, on April 8th, 1908, there was approved by the Governor of Maryland an Act of Assembly of such tenor and effect as is shown by the printed reproduction thereof, published by authority of the said State in the volume professing to contain the Laws of Maryland for the year 1908, commencing on page 347 of the said printed volume under the heading "Chapter 525—An act to fix the qualifica-

tions of voters at municipal elections in the City of Annapolis and to provide for the registration of said voters" and which is prayed to be taken as part of this declaration; and likewise as appears by a true copy of the Act of Assembly aforesaid, hereunto annexed, marked "Plaintiff's Exhibit Act," and which is prayed to be taken and considered as a part of this declaration with the same effect as if herein set forth in words and figures at length; and, as appears by the said legally authorized printed reproduction and likewise by the exhibit above mentioned the fourth section of the Act of Assembly above mentioned was, and is in the words and figures following, that is to say:

3 "SEC. 4. Said registers of voters shall at said registration register all male citizens of the said City of Annapolis applying for registration of twenty-one years of age or over, who have resided therein one year preceding any municipal election, who have never been convicted of any infamous crime under the laws of the State of Maryland, and who shall come within any one of the three following classes of male citizens. 1. All taxpayers of the city of Annapolis assessed on the city books for at least five hundred dollars. 2. And duly naturalized citizens. 2½. And male children of naturalized citizens who have reached the age of 21 years. 3. All citizens who, prior to January 1st, 1868, were entitled to vote in the State of Maryland or any other State of the United States at a State election, and the lawful male descendants of any person who, prior to January 1st, 1868, was entitled to vote in this State or in any other State of the United States at a State election, and no person not coming within one of the three enumerated classes shall be registered as a legal voter of the city of Annapolis or qualified to vote at the municipal elections held therein, and any person so duly registered shall, while so registered be qualified to vote at any municipal election held in said city; said registration shall in all other respects conform to the laws of the State of Maryland relating to and providing for registration in the State of Maryland."

Of which said section so much as is contained in the following passage, namely:

"and who shall come within any one of the three following classes of male citizens. 1. All taxpayers of the city of Annapolis assessed on the city books for at least five hundred dollars. 2. And duly naturalized citizens. 2½. And male children of naturalized citizens who have reached the age of 21 years. 3. All citizens who, prior to January 1, 1868, were entitled to vote in the State of Maryland or any other State of the United States at a State election, and the lawful male descendants of any person, who, prior to January 1st, 1868, was entitled to vote in this State or in any other State of the United States at a State election, and no person not coming within one of the three enumerated classes shall be registered as a legal voter of the city of Annapolis or qualified to vote at the municipal election held therein."

was and is contrary to and forbidden by the Constitution of the United States and Laws of the United States enacted in pursuance

thereof; and more especially to the 15th Amendment to the Constitution of the United States and to so much of the Act of Congress approved May 31st, 1870, and printed in full by authority of the United States in 16 Statutes at Large, 140 and likewise constituting section 2004 of the United States revised statutes, as is in the words and figures following, that is to say:

“All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.”

in so far as the said portion of the said section of the said Act of Assembly of the said State of Maryland affects or professes or attempts to affect the right to vote of any citizen of the United States by reason of his race, color or previous condition of servitude, or the race, color or previous condition of servitude of any of his ancestors, prior to the first day of January, in the year one thousand, eight hundred and sixty-eight; and being thus, as aforesaid, contrary to and forbidden by the supreme law of the land, the same was and is, wholly invalid and of no effect in law, as affecting the rights

5 of any such citizen under and by virtue of section 2 of Article VI of the Constitution of the United States.

And the plaintiff further says that he is a citizen of the United States, born in the said City of Annapolis on February 10, 1874, and has always been a resident and citizen of the said City of Annapolis, and prior to and on the first day of January in the year one thousand, eight hundred and sixty-eight, his, the said plaintiff's grandfather, one Alexander Howard, was a free male citizen of the United States, at the age of twenty-one years and upwards, who would have been prior to and on the day and year last aforesaid, entitled to vote at any election held in Anne Arundel County in the State of Maryland, but for the word “white” in the first sentence of Section 1 of Article I of the Constitution of Maryland, then in force, which word was subsequently in legal effect expunged by the adoption of the 15th Amendment to the Constitution of the United States.

And the plaintiff further says that his said grandfather then and there was and always had been and thereafter remained and he himself is and always has been, of the negro race and black color, and by reason of his said race and color and for no — reason whatsoever, his said grandfather, Alexander Howard, was prior to and on the first day of January, in the year one thousand, eight hundred and sixty-eight excluded from the elective franchise in the State of Maryland.

And the plaintiff further says that he, the said plaintiff, has always been a law abiding and reputable citizen of the State of Maryland and of Anne Arundel County therein, and of the City of Annapolis, and that neither his said grandfather nor himself was ever

convicted of any infamous crime or otherwise disqualified to exercise the elective franchise and that he, the said plaintiff, has been duly admitted to the Bar, and is at present a practicing lawyer in the City, County and State aforesaid.

6 And the plaintiff further says that upon and immediately after his attaining the age of twenty-one years, to wit, in the year one thousand, eight hundred and ninety-five, he was duly registered as a legal voter of the State of Maryland, in Anne Arundel County, and as such, and in accordance with the provisions of Article II of the Code of Public Local Laws of the State of Maryland, title "Anne Arundel County," as then in force and from time to time thereafter amended and re-enacted, he became and was and has continuously been and is now entitled to vote at municipal elections of the City of Annapolis, and his rights as such voter were recognized by all officers of election and registration of the State of Maryland, and of the said City of Annapolis for a period of more than fourteen years.

And the said plaintiff further says that he was again registered as such legal voter of the State, County and City aforesaid in the year one thousand, eight hundred and ninety-six, and that in accordance with the said Article of the said Code of Public Local Laws, he became and was and has continuously been and is now, as a citizen of the City of Annapolis entitled to vote for members of the General Assembly of Maryland, likewise entitled to vote at all such municipal elections, and has duly exercised his said rights from the time lastly above mentioned to the time of the happening of the grievance hereinafter complained of, voting at every election, Federal, State or Municipal held in the said city of Annapolis, for a period of more than fourteen years.

And the plaintiff further says that the defendants herein are two of the three registers appointed, together with one Clarence M. Jones, for the Third Ward of the City of Annapolis, in accordance with the provisions of Section 1 of the Act of Assembly of the State of Maryland, first above mentioned.

And, as such, in accordance with their official obligations and in compliance with their oath to support the Constitution of the United States, it became and was their evident duty to altogether disregard so much of the 4th Section of the Act of Assembly

7 above mentioned as abridges or restricts or professes or attempts to abridge or restrict the right of suffrage of the plaintiff or of any citizen of the United States by reason of race, color or previous condition of servitude.

And the plaintiff well hoped that the defendants would faithfully and conscientiously discharge the said duty and fulfill their obligation aforesaid, and, in such hope and confidence, on the seventh day of June last, at Annapolis, in the State of Maryland aforesaid, the same being one of the days mentioned in Section 3 of the Act of Assembly first above mentioned, he, the said plaintiff applied to the said defendant- and the said Clarence M. Jones, such registers as aforesaid, then and there sitting as such registers aforesaid, in accordance with the Act of Assembly aforesaid for registration as a

legal voter of the City of Annapolis, in accordance with the provisions of the said Act, and demanded that he be so registered.

Yet the said defendants, wholly regardless of their said duty and obligation and of the plaintiff's rights in the premises notwithstanding the protest of the said plaintiff, and the vote to the contrary by the said Clarence M. Jones as such registers as aforesaid, declined and refused to permit the said plaintiff to be so registered as such legal voter as aforesaid; and thus restricted and abridged the plaintiff's right of suffrage which he had enjoyed for more than fourteen years, avowedly and only, because the grandfather of the said plaintiff, by reason of his race and color and for no other reason whatsoever, was not entitled to vote in the State of his residence, to wit, the State of Maryland prior to the first day of January, one thousand, eight hundred and sixty-eight, and their said refusal to so register the said plaintiff was caused and occasioned by no other matter or thing whatsoever; that the plaintiff offered to vote at the municipal election held in said City on the twelfth day of July, 1909, at the time and place and in the manner prescribed by law and his vote was refused solely because he was not registered as a voter as provided by said Act of Assembly.

8 Whereby, to wit, by such wrongful, illegal and oppressive refusal and declination on the part of the said defendants as such registers as aforesaid, to place the name of the plaintiff on the registration list of voters entitled to vote at municipal elections in the City of Annapolis, the plaintiff has been and is, under color of an alleged statute of a State, to wit, of the said Act of the Assembly of the said State of Maryland, subjected and caused to be subjected to the deprivation of a right, privilege and immunity secured to him, the said plaintiff, by the Constitution and Laws, namely of the privilege and immunity to have his right to vote at elections as entitled as such citizen in a city, a municipality and a territorial subdivision of a State, to wit, of the State of Maryland permitted and allowed without distinction or discrimination against him by reason of racial color on his part.

And the plaintiff has been thereby deprived of the right to vote at an election held in the said city of Annapolis on the twelfth day of July in the year one thousand, nine hundred and nine, and of the right to vote at all future elections in the said city and is subjected to an unjust stigma and aspersions on his character and status as a citizen, and his feelings have been greatly wounded, and he is subjected to humiliation and obloquy and brought into public scandal, infamy and disgrace, and the plaintiff claims five thousand dollars damages.

J. WIRT RANDALL,
EDGAR H. GANS,
EDWIN G. BAETJER,
CHARLES J. BONAPARTE,
Plaintiff's Attorneys.

PLAINTIFF'S EXHIBIT ACT.

"Chapter 525.

An Act to Fix the Qualifications of Voters at Municipal Elections in the City of Annapolis and to Provide for the Registration of said Voters.

SECTION 1. Be it enacted by the General Assembly of Maryland, That the Supervisors of Elections for Anne Arundel County be and they are hereby authorized and directed, during the month of May, in the year nineteen hundred and nine, and in the same month every two years thereafter, to appoint three registers for the city of Annapolis for each ward of said city, one from each of the two leading political parties of the State; said registers of voters shall receive the same compensation as registers of voters under the general laws of the State, and shall hold office for the term of two years until their successors are duly appointed and qualified. Said registers shall take the usual oath of office before the Supervisors of Elections.

SEC. 2. And be it enacted, That said Supervisors of Elections shall procure and deliver to the registers of voters for each of the said wards two registration books similar in all respects to registration books now in use under the election laws of Maryland, and all necessary blanks and stationery for conducting and having a complete registration of the voters of said city.

SEC. 3. And be it enacted, That said registers for each of said wards shall open said registration books at the usual polling places in each of the wards of said city in the first and second Mondays and Tuesdays of June in the year nineteen hundred and nine for a complete registration of the voters of said city who possess the qualifications required by this Act, and every two years thereafter, on the first Monday in May, said registers of voters shall open said books at the usual polling places in said wards for the revision of said lists of registration and for the registration of new voters possessing
10 the qualifications presented by this Act. Said registers of voters shall give at least ten days' notice of the time and place of said registration, to be published in the newspapers doing the city printing and by hand bills posted around the city.

SEC. 4. Said registers of voters shall at said registration register all male citizens of the said city of Annapolis applying for registration of twenty-one years of age or over, who have resided therein one year preceding any municipal election, who have never been convicted of any infamous crime under the laws of the State of Maryland, and who shall come within any one of the three following classes of male citizens. 1. All taxpayers of the city of Annapolis assessed on the city books for at least five hundred dollars. 2. And duly naturalized citizens. 2½. And male children of naturalized citizens who have reached the age of 21 years. 3. All citizens who, prior to January 1, 1868, were entitled to vote in the State of Maryland or any other State of the United States at a State election, and

the lawful male descendants of any person, who, prior to January 1, 1868, was entitled to vote in this State or in any other State of the United States at a State election, and no person not coming within one of the three enumerated classes shall be registered as a legal voter of the city of Annapolis or qualified to vote at the municipal elections held in said city; said registration shall in all other respects conform to the laws of the State of Maryland relating to and providing for registration in the State of Maryland.

SEC. 5. Said books of registration shall at the close of each registration be turned over to the Supervisors of Elections for safe keeping and shall be delivered to the judges of municipal elections in the city of Annapolis for the purpose of holding municipal elections therein, and shall be the only books of registration for municipal elections in said city.

SEC. 6. The cost of said registration shall be paid by the city of Annapolis.

11 SEC. 7. Any register of voters under the provisions of this Act who shall knowingly violate the provisions of this Act shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in the general laws of this State relating to registration.

SEC. 8. And be it enacted, That this Act shall take effect from the date of its passage.

Approved April 8, 1908."

12 *Summons.*

Issued July 30, 1909.

THE UNITED STATES OF AMERICA,
District of Maryland, To wit:

The President of the United States of America to the Marshal for the Maryland District, Greeting:

We command you that you summon Charles E. Myers and A. Claude Kalmey if they be found in your district, to appear before the Judges of the Circuit Court of the United States of America for the Fourth Circuit in and for the District of Maryland, at the United States Court Room in the City of Baltimore, on the 1st Monday of September next, to answer unto the action of William H. Howard and how you shall execute this precept you make known to us in our Circuit Court for the District aforesaid, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 30th day of July, in the year of our Lord one thousand nine hundred and nine.

Issued the 30th day of July, 1909.

[SEAL OF COURT.]

ARTHUR L. SPAMER, *Clerk.*

Marshal's Return Endorsed on Above Summons.

"Summoned Charles E. Myers and A. Claude Kalmey, both personally, at Annapolis, Maryland, July 31, 1909.

JOHN F. LANGHAMMER,
U. S. Marshal."

13

Appearance for Defendants.

Filed August 31, 1909.

In the Circuit Court of the United States for the District of Maryland.

No. 40, Civil "E" D'k't.

WILLIAM H. HOWARD
versus
CHARLES E. MYERS, A. CLAUDE KALMEY.

Mr. Clerk:

Enter my appearance as attorney for the defendants in the above entitled case.

RIDGELY P. MELVIN.

14 *Petition of Plaintiff and Order of Court Thereon Directing Defendants to Plead within Certain Time.*

Filed November 13, 1909.

In the Circuit Court of the United States for the District of Maryland.

40, Civil E.

WILLIAM H. HOWARD
vs.
CHARLES E. MYERS and A. CLAUDE KALMEY.

Petition.

To the Honorable the Judge of said Court:

The Petition of William H. Howard, Plaintiff in the above entitled cause, respectfully shows:

That on July 30, 1909, he brought his suit in this Court against the above mentioned Defendants, and filed a declaration therein of such tenor and effect as is shown by the original thereof now remain-

ing of record in this Honorable Court, and whereunto your Petitioner humbly prays reference;

That the Defendants in the said suit were duly summoned and appearance entered for them by Ridgely P. Melvin, their attorney, but they have filed no plea in said cause;

That your Petitioner has recently ascertained the facts to be that owing to some inadvertence, no copy of his declaration aforesaid was furnished at the time of the institution of the suit to be served upon the said Defendants by the Marshal, and that, by reason of this omission, the said Defendants have not been under a rule plea.

He therefore humbly prays that this Honorable Court may forthwith lay a rule upon the said Defendants, requiring them to plead to his declaration aforesaid within such time and upon such conditions as may seem to your Honor meet and just, and that he may have such other and further relief in the premises as the exigency of his case may require.

And as in duty &c.,

J. WIRT RANDALL,
EDGAR H. GANS,
EDWIN G. BAETJER,
CHARLES J. BONAPARTE,
Attorneys for Plaintiff.

Order and Rule.

Upon the foregoing petition it is ordered and ruled by the Court this 13th day of November, 1909, that the Defendants in the above entitled cause plead to the declaration therein filed within 20 days after duly attested copies of the said declaration, the above petition and this order and rule shall have been served upon them or their attorney of record.

THOS. J. MORRIS, *Judge.*

The Foregoing Petition Endorsed.

Service of the within Petition & Order of Court and a copy of Declaration is hereby admitted on behalf of the Defendants this 19th day of November, 1909, at Annapolis, Maryland.

RIDGELY P. MELVIN, *Attorney.*

Marshal's Return Endorsed on Above Petition.

Served copy of the within Petition & Order of Court and a copy of Declaration on Ridgely P. Melvin, Attorney for Charles E. Myers and A. Claude Kalmey, at Annapolis, Maryland, November 19, 1909.

JOHN F. LANGHAMMER,
U. S. Marshal.

Demurrer.

Filed December 9, 1909.

In the Circuit Court of the United States for the District of Maryland.

WILLIAM H. HOWARD

vs.

CHARLES E. MYERS and A. CLAUDE KALMEY.

Demurrer.

The defendants, Charles E. Myers and A. Claude Kalmey demur to the declaration of the plaintiff in the above case, and for grounds of demurrer say:

1. That said declaration is insufficient in law and bad in substance.

2. That said declaration fails to show any ground of jurisdiction in this Honorable Court over or in respect to the parties, matters and things set forth therein.

3. That by the laws under which they, the defendants, were appointed and acting, the defendants were charged with and exercising in respect to the transactions, matters and things complained of and set forth in said declaration, duties, functions and powers of a judicial nature; that in the discharge and exercise of said duties, functions and powers, they, the defendants, were not and cannot be held legally responsible for anything more than an honest and faithful exercise of their judgment; and that said declaration fails to allege that the defendants or either of them, did, or failed to do, any act to the prejudice or injury of the plaintiff, either wilfully, maliciously, fraudulently or corruptly, so as to render them or either of them legally liable to the plaintiff in the premises.

17 4. Because the declaration charges on its face that the Act of the General Assembly of Maryland, 1908, chapter 525, under which, as the declaration further avers, the defendants were appointed and acting, was and is illegal, unconstitutional and void; and the declaration fails to show that the defendants were authorized to register or charged with any duty of registering the plaintiff at the time he presented himself for registration, as set forth in said declaration, under any other statute or law; that, therefore, upon the averments and charges of the declaration, the defendants had no authority and were charged with no duty to register the plaintiff when he presented himself to be registered, as set forth in the declaration, and, accordingly, are not legally liable to the plaintiff in the premises.

5. Because the defendants are not subject or liable to any action for damages for refusing to register the plaintiff under said Act of 1908, Chapter 525, which, as charged and shown by the said declaration, forbade the defendants to register the plaintiff when he presented himself for registration, as set forth in said declaration, and

which said Act, as appears from its context, imposed criminal penalties upon the defendants for any violation of its terms and provision.

6. And for other reasons and grounds to be assigned at the hearing.

7. That the allegations contained in the declaration in this case do not show a case where the State of Maryland, or any person acting under its authority, has denied or abridged the right of the plaintiffs to vote on account of race, color or previous condition of servitude.

8. That the inhibitions contained in the Fifteenth Amendment against the denial or abridgment of the right of the citizens of the United States to vote on account of race, color or previous condition of servitude is by plain language of the amendment made to apply only to the right to vote which citizens of the United States have by virtue of such citizenship; that is, the right to vote derived from the United States, and that the inhibition therein contained does not apply to or in any way affect the right to vote conferred by the state upon any of its citizens.

9. That allowing the broadest possible construction, the right of citizens of the United States to vote mentioned in the Fifteenth Amendment, which the states are thereby prohibited from denying or abridging on account of race, color or previous condition of servitude, is a right to vote at elections of a public general character and does not include the right to vote in corporate bodies created solely by legislative will and wherein such right to vote is dependent upon legislative discretion as municipal corporations.

10. That if construed to have reference to the right to vote at state or municipal elections, the Fifteenth Amendment would be beyond the amending power conferred upon three-fourths of the states by Article V of the Constitution, and therefore the amendment should not receive that construction, if it is fairly open to a more limited construction.

Wherefore the defendants pray judgment, etc.

ISAAC LOBE STRAUS,
RIDGELY P. MELVIN,
WILLIAM L. MARBURY,
Attorneys for Defendants.

Opinion of the Court.

Filed October 28, 1910.

In the Circuit Court of the United States for the District of Maryland.

At Law.

JOHN B. ANDERSON

v.

CHARLES E. MYERS and A. CLAUDE KALMEY.

WILLIAM H. HOWARD

v.

CHARLES E. MYERS and A. CLAUDE KALMEY.

ROBERT BROWN

v.

CHARLES E. MYERS and A. CLAUDE KALMEY.

MORRIS, *District Judge:*

Demurrers to the Plaintiffs' Declarations.

20 The questions of law which are now before this Court for its ruling have been raised by the defendants' demurrers to the declarations filed in three actions at law.

They are suits for damages against the defendants, Myers and Kalmey, who were two of the registers upon whom, together with a third register, one Clarence M. Jones, was imposed the duty of registering the qualified voters at a Special Registration held in the City of Annapolis in the month of June, 1909.

By the votes of the two registers who are defendants, the plaintiffs were denied registration; and in consequence, their votes were refused by the Judges of Election for the reason that they were not entitled to vote because their names did not appear among the registered voters of the City of Annapolis.

The Plaintiffs allege that they are natives of Maryland and lifelong residents therein who have been registered as voters since they were respectively 21 years of age, and had been continuously since registered voters in Maryland. They allege that in obedience to the law of Maryland enacted at the January session, 1908, Chapter 525, they were denied registration by the defendants, although in other respect they were legally qualified, solely because they were negroes and were discriminated against solely on that account. That the defendants as registers denied the plaintiffs registration against the protest of the third register wrongfully, illegally and oppressively and thus prevented the plaintiffs from voting at subsequent elections in the City of Annapolis.

The declarations allege that the action of said defendants as reg-

isters was in accordance with the said Act of the Legislature of Maryland, Chapter 525 of the Acts of 1908, providing for the qualification of voters in municipal elections in the City of Annapolis, and providing for the registration of said voters. By said Act of 1908, the registers were directed to register (1) all male citizens of Annapolis of 21 years or over who had resided therein over one
 21 year, who had never been convicted of any infamous crime, and who were taxpayers assessed on the City tax books at least \$500; (2) all duly naturalized citizens; (3) all male children of naturalized citizens of 21 years of age; (4) all citizens who, prior to January 1, 1868, were entitled to vote in the State of Maryland or any other State of the United States at a State election; (5) and all lawful male descendants of any person who, prior to January 1, 1868, was entitled to vote in Maryland or in any other State of the United States at a State election. And enacted that no person not coming within one of the enumerated classes should be registered as a legal voter of the City of Annapolis or be qualified to vote at any municipal election held in said city.

The several declarations then allege that so much of said Act of Maryland as refuses registration and consequently the right to vote at municipal elections in the City of Annapolis to all persons or their descendants who were not entitled to vote in Maryland prior to January 1, 1868, is contrary to the constitution and laws of the United States and more especially to the 15th Amendment to the Constitution and to the Act of Congress approved May 31, 1870, constituting Section 2004 of the United States Revised Statutes, in so far as the said clause of said law of Maryland of 1898 affects or professes or attempts to affect the right to vote of any citizen of the United States by reason of the race, color or previous condition of servitude of himself or any ancestors of his.

The plaintiff Anderson alleges that he is a citizen of the United States, born in Anne Arundel County, Maryland, in 1834. That prior to January 1, 1868, he would have been entitled to vote at any election in Anne Arundel County but for the word "white" in the Constitution of Maryland then in force, restricting the right to vote to "white" citizens by which restriction, being of the negro race and black color and by reason of no other cause whatsoever, he was, prior to January 1st, 1868, excluded from voting at municipal elections in the City of Annapolis.

22 The plaintiffs, Howard and Brown, allege substantially that their father and grandfather respectively would have been entitled to vote in Maryland except for the word "white" in the Maryland Constitution which was in force prior to January 1, 1868.

That they have heretofore voted at municipal elections and were denied registration by the defendants acting as registers by reason of the provision of the Maryland law of 1908 solely and avowedly on account of their race and color; that is to say, because in the case of Anderson, he could not on account of his race and color have voted prior to January 1, 1868; and in the cases of Howard and Brown, because their father and grandfather respectively could not on account of race and color have so voted.

The plaintiffs all allege that in all other respects except their race and color, the plaintiffs met all the requirements of the law entitling them to registration.

To these declarations, the defendants have interposed a demurrer on the following ground:

1. That said declaration is insufficient in law and bad in substance.

2. That said declaration fails to show any ground of jurisdiction in this Honorable Court over or in respect to the parties, matters and things set forth therein.

3. That by the laws under which they, the defendants, were appointed and acting, the defendants were charged with and exercising in respect to the transactions, matters and things complained of and set forth in said declaration, duties, functions and powers of a judicial nature; that in the discharge and exercise of said duties, functions and powers, they, the defendants, were not and cannot be held legally responsible for anything more than an honest and faithful exercise of their judgment; and that said declaration fails to

23 allege that the defendants or either of them, did or failed to do any act to the prejudice or injury of the plaintiff, either wilfully, maliciously, fraudulently or corruptly, so as to render them or either of them legally liable to the plaintiff in the premises.

4. Because the declaration charges on its face that the Act of the General Assembly of Maryland, 1908, chapter 525, under which, as the declaration further avers, the defendants were appointed and acting, was and is illegal, unconstitutional and void; and the declaration fails to show that the defendants were authorized to register or charged with any duty of registering the plaintiff at the time he presented himself for registration, as set forth in said declaration, under any other statute of law; that, therefore, upon the averments and charges of the declaration, the defendants had no authority and were charged with no duty to register the plaintiff when he presented himself to be registered, as set forth in the declaration, and accordingly, are not legally liable to the plaintiff in the premises.

5. Because the defendants are not subject or liable to any action for damages for refusing to register the plaintiff under said Act of 1908, Chapter 525, which, as charged and shown by the said declaration, forbade the defendants to register the plaintiff when he presented himself for registration, as set forth in said declaration, and which said Act, as appears from its context, imposed criminal penalties upon the defendants for any violation of its terms and provision.

6. And for other reasons and grounds to be assigned at the hearing.

The demurrers having been set for hearing, the Court has had the benefit of a very full oral presentation of the law by the able and distinguished counsel who have appeared for the plaintiffs and defendants, and they have also assisted the Court by learned briefs.

24 1. The first proposition urged by the defendants is that the declarations are insufficient in law because they do not allege

that the defendants acted wilfully or maliciously in refusing registration to the plaintiffs.

It is true that in refusing registration to the plaintiffs, the registers were acting in their official capacity and that by the law of Maryland under which they were acting, they were required to refuse registration to the Plaintiffs. But, in my judgment, there are two considerations which affect this defense.

If the provision of the State law under which they acted in refusing registration is a void provision, it affords them no protection; *Ex-Parte Siebold*, 100 U. S., 371-376; and if by a valid law of the United States, a right of action is given to the plaintiffs as a remedy for denial of registration, then their right of action is based upon such valid law and is referable to it and is governed by its terms.

The consideration of the question whether or not the provisions of the Maryland law under and by virtue of which the plaintiffs were denied registration and, in consequence, denied the right to vote, is a valid provision, lies at the foundation of these suits and must of necessity be dealt with at the threshold.

By the 15th Amendment to the Constitution of the United States proclaimed March 30, 1870, the following provisions became part of the Constitution of the United States and became the supreme law of the land:

SEC. 1. "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude."

SEC. 2. "The Congress shall have power to enforce this Article by appropriate legislation."

25 Congress exercised the power thus given it by enacting the statute approved May 31, 1870, which is now Section 2004 of the Revised Statutes, which reads as follows:

SEC. 2004. "All citizens of the United States who are otherwise qualified by law to vote at any election by the people of any State, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections without distinction of race, color or previous condition of servitude; any constitution, law, custom, usage or regulation of any State or territory or by or under its authority to the contrary notwithstanding."

And Congress by an Act approved April 20, 1871, now Section 1979 of the Revised Statutes, further enacted:

SEC. 1979. "Every person who under color of any statute, ordinance, regulation, custom or usage of any State or territory, subjects or causes to be subjected any citizen of the United States, or other person within the jurisdiction thereof, to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

And also enacted Clause 16 of Section 629 of the Revised Statutes giving to the Circuit Courts of the United States original jurisdiction as follows:

"Sixteenth. Of all suits authorized by law to be brought by any person to redress the deprivation under color of any law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or of any right secured by any law providing for equal rights of citizens of the United States or of all persons within the jurisdiction of the United States."

Prior to January 1, 1868, by the Constitution of Maryland, only "white" male citizens of the United States having the required length of residence were entitled to vote, and therefore, by the letter of the Maryland law, prior to January 1, 1868, the plaintiff Anderson being a black man was not entitled to vote; and Howard and Brown, not being descended from persons who, being white, were entitled to vote were likewise not entitled to vote; and the defendants upon that ground solely denied to the plaintiffs registration.

26 Upon this state of facts and of the supreme law of the land, have not the defendants, contrary to that law, discriminated against the plaintiffs in the denying to them the right to vote because of their race, and color; and have not the statutes enacted for that purpose given them a right of action?

It is true that the words "race" and "color" are not used in the statute of Maryland; but the meaning of the law is as plain as if the very words had been made use of; and it is the meaning, intention and effect of the law, and not its phraseology, which is important. No other possible meaning for this provision has been suggested except the discrimination which by it is plainly indicated.

This being so, what is the effect of the 15th Amendment? It is declared by the Supreme Court to have the effect of obliterating from the statutes so much of their provisions as creates the forbidden discrimination.

Neal v. Delaware, 103 U. S., 370.

In the case of United States vs. Reese, 92 U. S., 214 Chief Justice Waite said (pp. 217-218):

"The Fifteenth Amendment does not confer the right of suffrage upon anyone. It prevents the States, or the United States, however, from giving preference, in this particular to one citizen of the United States over another on account of race, color or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race &c., as it was on account of age, property or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment, there was no constitutional guaranty against the discrimination; now there is. It follows that the amendment has invested the citizen of the United States with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color or previous condition of servitude.

This under the express provisions of the second section of the amendment, Congress may enforce by 'appropriate legislation.'"

In *Ex-Parte Yarborough*, 110 U. S., 651, Mr. Justice Miller, speaking for the Court, said (p. 664):

27 "The Fifteenth Amendment of the Constitution, by its limitation on the power of the States in the exercise of their right to prescribe the qualifications of voters in their own elections, and by its limitation of the power of the United States over that subject, clearly shows that the right of suffrage was considered to be of supreme importance to the national government, and was not intended to be left within the exclusive control of the States."

And again:

"While it is quite true, as was said by this Court in *United States vs. Reese*, 92 U. S., 214, that this article gives no affirmative right to the colored man to vote, and is designed primarily to prevent discrimination against him whenever the right to vote may be granted to others, it is easy to see that, under some circumstances, it may operate as the immediate source of a right to vote. In all cases where the former slave-holding States had not removed from their Constitution the words "white man" as a qualification for voting, this provision did, in effect, confer on him the right to vote, because, being paramount to the State law, it annulled the discriminating word 'white', and thus left him in the enjoyment of the same right as white persons. And such would be the effect of any future constitutional provision of a State which should give the right of voting exclusively to white people."

Neale vs. Delaware, 103 U. S., 370.

"In such cases the Fifteenth article of amendment does, *proprio vigore*, substantially confer on the negro the right to vote, and Congress has the power to protect and enforce that right."

That the 15th Amendment has *proprio vigore* the effect of eliminating the qualifying adjective "white" from all State constitutions and laws in fixing the qualifications of voters has been fully recognized by the Court of Appeals of Maryland in numerous cases.

Schaeffer v. Gilbert 73 Md., 66.

Southerland v. Norris 74 Md., 326.

Hanna v. Young, 84 Md., 179.

Pope v. Williams 98 Md., 59.

It is therefore apparent that in enforcing the discriminating provisions of the State statute, the registers were doing and intended to do an act forbidden by the supreme law of the land and for doing which the State statutes could afford them no protection.

It is suggested in argument that if the Clause in question of the Maryland statute is, by the 15th Amendment, rendered invalid, the whole statute falls with it and the Registers had no power to register anyone under it. This was held in *Giles v. Harris*, 189 U. S., 475, where the complainant alleged that the whole registration scheme of the Alabama constitution was a fraud on the Constitution

of the United States and void, and asked the Court in an Equity suit to so declare; at the same time, asking the Court to decree that the complainant be registered. The Court held that if the complainant's contention was sustained and the whole scheme declared void, there was no warrant of law for registering him at all.

The plaintiffs make no such allegation or contention in this case. The law is recognized as valid in all its provisions except the one which discriminates; and the plaintiffs allege that but for that discriminating clause, they would have been entitled to register.

We are now to consider whether it was a requisite of good pleading that the declaration should allege that the defendants acted wilfully, maliciously, fraudulently or corruptly in order to render them legally liable in these suits which are brought to enforce the statutory remedy given by Section 2004 and Section 1979.

It is to be observed that there can be no right of action under the 15th Amendment and these Sections of the Revised Statutes unless the discrimination and denial was in pursuance of a State law.

Therefore, if the defendants' contention could be upheld, the defendant in such a suit could always plead that he did not act maliciously or wilfully or in bad faith, because he was acting in obedience to the laws of the State.

The purpose of Congress in these Sections is distinctly stated to be to give a right of action and an effective safeguard against deprivation of a right by the enforcing of a statute of the State; and when it

29 says (Section 1979) that "every person who, under color of any statute of any State, subjects or causes to be subjected any citizens of the United States to deprivation of any right, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law," what can it mean but that the enforcement of the State law is of itself wrong which gives rise to the cause of action? How could it be made to appear that the officer appointed to enforce a State law acted was guilty of malice in doing what the State law commanded him?

The common sense of the situation would seem to be that the law forbidding the deprivation or abridgment of the right to vote on account of race or color being the supreme law, any State law commanding such deprivation or abridgment is nugatory and not to be obeyed by any one; and any one who does enforce it does so at his known peril and is made liable to an action for damages by the simple act of enforcing a valid law to the injury of the plaintiff in the suit, and no allegation of malice need be alleged or proved.

There are restrictions of the right of voting which might in fact, operate to exclude all colored men, which would not be open to the objection of discriminating on account of race or color. As for instance, it is supposable that a property qualification might, in fact, result, in some localities, in all colored men being excluded; and the same might be the result, in some localities, from an educational test; and it could not be said although that was the result intended, that it was a discrimination on account of race or color; but would be referable to a different test. But looking at the constitution of Maryland prior to January 1, 1868, how can it be said, with any

show of reason, that any but white men could vote—then and how can the Court close its eyes to the obvious fact that is for that reason solely that the test is inserted in the Maryland Act of 1908, and is not the Court to take notice of the fact that during all the forty years since the adoption of the 15th Amendment, colored men have been allowed to register and vote in Maryland until the enactment of the Maryland Statute of 1908?

30 It was primarily the right of suffrage which was to be protected as against any restrictive legislation of the State which was the subject matter dealt with by the 15th Amendment and the Revised Statutes; and considering the purpose of the law, it does not seem that any other construction can be defensible.

United States v. Reese 92 U. S., 214-218.

It is urged by the defendants that the inhibitions of the 15th Amendment against the denial of the right to vote of citizens of the United States on account of race or color must be held to apply only to the right to vote at Congressional elections derived from the United States and does not apply to the right to vote at State or municipal elections given by the State.

The 15th Amendment was proclaimed March 30, 1870, and by the Act of May 31st, 1870, Congress undertook to exercise the powers it understood were granted it by the Amendment and passed the Act, now Section 2004, providing expressly that all citizens of the United States otherwise qualified should be entitled and allowed to vote at all elections in any State, territory, county, city, without distinction of race or color, any constitution, law, custom, usage or regulation of any State or territory to the contrary, notwithstanding.

Nothing in the way of interpretation by the legislative body which itself had framed the amendment could be more significant than this enactment passed by Congress immediately upon its adoption. I do not find in the cases cited from the Supreme Court anything opposed to that interpretation. It seems clear that when, by the 15th Amendment, it is declared that the right of citizens of the United States to vote shall not be denied or abridged by any State on account of race or color, it means what Congress understood it to mean: namely, the right to vote at all public elections.

It is further urged by the defendants that if the 15th Amendment be construed as forbidding discrimination at State municipal elections, it is beyond the power of the States to so amend it: and therefore it should not receive that construction.

I do not appreciate the force of this contention.

31 That the Amendment declaring all persons born in the United States to be citizens of the United States and of the State wherein they reside, without discrimination on account of race or color, is beyond the amending power is not suggested; and if so, it cannot be reasonably maintained that to declare that such citizens shall not be deprived of the privilege of suffrage because of race or color, is beyond the amending power. One follows from the other.

It is my judgment that each of the declarations states a case in

which the right of action is validly given by the constitution and laws of the United States and that the demurrers should be over-ruled.

32

Order of Court Overruling Demurrer.

Filed November 14, 1910.

In the Circuit Court of the United States for the District of Maryland.

WILLIAM H. HOWARD

vs.

CHARLES E. MYERS and A. CLAUDE KALMEY.

In the above entitled cause it is ordered this 14th day of November, A. D. 1910, that the Demurrer of the Defendants to the Plaintiff's Declaration be, and the same is, hereby over-ruled; and that the defendants have leave to plead to the Declaration, if they shall be so advised, on or before the first day of December next; and also that a copy of this order be served on them or their counsel of record on or before the 20th day of November next.

THOS. J. MORRIS, *Judge.*

33

Plea.

Filed November 23, 1910.

In the Circuit Court of the United States for the District of Maryland.

WILLIAM H. HOWARD

vs.

CHARLES E. MYERS and CLAUDE KALMEY.

And the defendants, Charles E. Myers and Claude Kalmey, by their attorneys, William L. Marbury, Isaac Lobe Straus, Ridgely P. Melvin and William L. Rawls, for plea to the declaration filed in the above-entitled case, say,—

That they did not commit the wrongs alleged.

RIDGELY P. MELVIN,
WM. L. RAWLS,
ISAAC LOBE STRAUS,
W. L. MARBURY,

Attorneys for Defendants.

34

Waiver of Jury Trial.

Filed February 3, 1911.

In the Circuit Court of the United States in and for the District of Maryland.

HOWARD
VS.
MYERS & KALMEY.

Stipulation.

It is agreed between the plaintiff and defendants in this case that the same shall be tried by the Court without a jury, and a jury trial is hereby expressly waived by the said parties.

RIDGELY P. MELVIN,
W. L. MARBURY,
W. L. RAWLS,

Att'ys for Def'ts.

CHARLES J. BONAPARTE,
E. G. BAETJER,
J. WIRT RANDALL,
EDGAR H. GANS,

Att'ys for Plaintiff.

35

Whereupon and in pursuance of the agreement of counsel the issues joined as aforesaid between the parties aforesaid were tried before the court without a jury, and the court after hearing the evidence produced on behalf of the plaintiff and the defendants and considering the same, and the prayers offered on behalf of the plaintiff and defendants and having made certain rulings thereon doth say that the said defendants are guilty of the premises in manner and form as the said plaintiff hath above complained against him, and doth assess the damages of him the said plaintiff by occasion of the premises to the sum of \$250.00.

And thereupon the court directed a verdict to be entered for the plaintiff for the sum of \$250.00 and the same was entered accordingly.

Therefore it is considered by the court here that the said plaintiff recover against the said defendants as well the said sum of \$250.00 for his damages as the sum of \$37.45 adjudged by the court here unto the said plaintiff for his costs and charges by him about his suit in this behalf expended; and the said defendant in mercy and that the said said plaintiff have hereof his execution, etc.

MEMO.—Verdict was rendered in the above entitled cause on the 3rd day of February, 1911, and judgment entered on said verdict on the 6th day of February, 1911.

36 *Order of Court Extending Time for Signing and Sealing the
Bills of Exception.*

Filed March 1, 1911.

In the Circuit Court of the United States for the District of
Maryland.

WILLIAM H. HOWARD

VS.

CHARLES E. MYERS and CLAUDE KALMEY.

Ordered by the Court this 1st day of March, 1911, upon application of the defendants that the time for preparing, signing and sealing the Bills of Exceptions in the above entitled cause, be and the same is hereby extended until and including the 1st day of April, 1911.

THOS. J. MORRIS, *Judge.*

The Plaintiff consents to the above order.

CHARLES J. BONAPARTE, *Att'y.*37 *Order of Court Extending Time for Signing and Sealing
Bills of Exception.*

Filed March 30, 1911.

In the Circuit Court of the United States for the District of
Maryland.

WILLIAM H. HOWARD

V.

CHARLES E. MYERS and A. CLAUDE KALMEY.

Upon application of the defendants in the above case, it is ordered by the Court this 30th day of March, 1911, that the time for preparing, signing and sealing the bills of exception in the above-entitled case be and the same is hereby extended until and including the 15th day of April, 1911.

THOS. J. MORRIS, *Judge.*

38 *Order of Court Extending Time for Signing and Sealing
Bills of Exception.*

Filed April 12, 1911.

In the Circuit Court of the United States for the District of
Maryland.

WILLIAM H. HOWARD

vs.

CHARLES E. MYERS and A. CLAUDE KALMEY.

Upon application of the defendants in the above entitled cause, it is ordered by the Court this 12th day of April, 1911, that the time for preparing, signing and sealing the bills of exception in the above entitled cause, be and the same is hereby extended until and including the first day of May, 1911.

THOS. J. MORRIS, *Judge.*

39 *Order of Court Extending Time for Singing and Sealing Bills
 of Exception.*

Filed April 29, 1911.

In the Circuit Court of the United States for the District of
Maryland.

WILLIAM H. HOWARD

V.

CHARLES E. MYERS and A. CLAUDE KALMEY.

Upon application by the defendants in the above entitled cause it is ordered by the Court this 29th day of April, 1911, that the time for preparing, signing and sealing the bills of exception in the above entitled cause be and the same is hereby extended until and including the 15th day of May, 1911.

THOS. J. MORRIS, *Judge.*

Bill of Exceptions.

Filed May 11, 1911.

In the Circuit Court of the United States for the District of Maryland.

WILLIAM H. HOWARD

VS.

CHARLES E. MYERS and A. CLAUDE KALMEY.

Defendants' First Bill of Exceptions.

At the trial of the above entitled cause, the plaintiff, to sustain the issues on his behalf joined, offered evidence as follows, to wit:

WILLIAM H. HOWARD, colored, plaintiff in this cause being duly sworn, according to law, testified as follows:

Direct examination:

That he is a citizen of the United States, and was born in Annapolis, Maryland, on the 10th day of February, 1874, and has always been a resident of the City of Annapolis and the State of Maryland. That his grandfather was named Alexander Howard and was a free male citizen of the United States, and of the age of 21 years and upwards on the first day of January, 1868. That his grandfather was born in the State of Maryland and was always a resident of Anne Arundel County in the State of Maryland, and had been such a resident for more than a year prior to January 1st, 1868.

That his grandfather, like himself, was of the negro race, and was nearly of the same very dark complexion. That witness has always been a law abiding citizen of the State of Maryland, and of

41 Anne Arundel County, has never been convicted of any infamous crime, and that no criminal charge has ever been placed against him in his life. That the grandfather of witness was never arrested in his lifetime, was never convicted of any crime. That witness is a member of the Bar of the State of Maryland and has with him a certificate to that effect.

(Witness here handed certificate in question to counsel and the same being offered in evidence is here reproduced as follows:)

"On the 29th day of January in the year of our Lord 1901, on motion made in open court, William H. Howard, Esq., having first taken and subscribed the oath prescribed by the Constitution and laws of Maryland, was admitted as an attorney of the Court of Appeals of Maryland, and as such is entitled to practice law in any of the courts of the State. Dated the 29th day of January, 1901."

That witness is the William H. Howard mentioned in said certificate, and is still practicing law in the City of Annapolis, in Anne Arundel County. That he attained the age of 21 years on February 10, 1895, and in the following June in the year 1895, he was regis-

tered as a voter of the State of Maryland in the City of Annapolis. That witness has voted at all state and municipal elections subsequent to that time, up to and until the last election held in the City of Annapolis in July, 1909, at which he was denied.

At this point the plaintiff's attorney offered in evidence the registration books of the third precinct of the sixth district of Anne Arundel County, which were admitted by the defendants to be the record of registered voters for that precinct and district; and it was also admitted that prior to the passage of the Act of the Assembly of Maryland mentioned in the declaration, that is Chapter 525, of the Acts of 1908, the same books were used under the law then existing for the registration of voters at state and municipal elections in the City of Annapolis, and that this was the record of all elections national, state and municipal in the City of Annapolis, and that this was the record of voters in the third ward of the City of Annapolis, and still continued to be the record for all elections except those held under the provisions of the Act of 1908, Chapter 525.

42 The plaintiff's attorney then offered in evidence and the court admitted the following entries from the aforesaid registration book: "Residence, 37 North West St.; Postoffice address, Annapolis; Surname, Howard; Christian name, William H.; Sworn or affirmed, sworn; age, 26; nativity (Place of birth), Maryland; color, colored; Term of residence, Precinct, 5 years; Term of residence, Legislative district, 26 years; term of residence, State, 26 years; naturalized, —; can read, Yes; qualified voter, Yes; date of application, year 1900, month, October, date two; signature, William H. Howard."

It was further admitted by counsel for the defendants that the entries in the book aforesaid showed that the said William H. Howard had voted at elections on November 3, 1906, November, 1907; November 1908; November 1909. That he did not vote at the primary election of 1910, and that he voted in November 1910.

It was further admitted by counsel for the defendants that the aforesaid entries were made from time to time at the dates mentioned by the officers of registration or election in pursuance of the laws then existing, and the William H. Howard to whom they refer was the plaintiff and witness.

Witness further testified that he knew the two defendants, Mr. Myers and Mr. Kalmey, and that they were together with a Mr. Clarence M. Jones the officers of registration appointed for the third ward of the City of Annapolis, who held and conducted the registration of voters in the City of Annapolis on the 7th day of June, 1909, under the provisions of Chapter 525 of the Act of 1908.

That witness called upon the second day of registration and applied to these gentlemen to be registered and that they on that occasion declined to register him. That when witness applied for registration he was asked under what clause he expected to qualify as a registered voter, and he told them (officers of registration) that he was a citizen of the United States, and that according to the Act

43 he proposed to qualify under the "grandfather clause." That he stated to them that as his grandfather was a free born citizen of the United States that he (witness) was entitled to vote; witness was then acquainted with the fact that he could not register under the terms of Chapter 525 of the Act of 1908. That at the time of his application for registration witness served, on the gentlemen in charge of the same, a written or printed communication.

Upon being handed a paper witness stated that the same was a copy of the communication which he served upon the officers of registration.

Counsel for the plaintiff then offered in evidence the said paper handed witness, which was admitted by the Court. The same reading as follows:

ANNAPOLIS, ANNE ARUNDEL COUNTY, MARYLAND,

June 14th, 1909.

Messrs. Charles E. Myers, A. Claude Kalmey and Clarence M. Jones, Registers of Voters for the City of Annapolis, appointed in accordance with Chapter 525 of Acts of Assembly of the State of Maryland of the Year 1908, approved April 8th in the said year.

GENTLEMEN: I apply for and demand registration as a legal voter of the City of Annapolis qualified to vote at the municipal elections held therein. I am a male citizen of the United States, of the State of Maryland and of the City of Annapolis, over twenty-one years of age, and have never been convicted of any infamous crime under the laws of the State of Maryland. I am not a taxpayer of the City of Annapolis assessed on the city books for at least five hundred dollars, nor am I a naturalized citizen nor the child of such citizen, nor was I entitled to vote at a State Election in the State of Maryland or any other State of the United States, prior to January 1st, 1868, nor am I a lawful male descendant of any person who, prior to such last mentioned date was entitled to so vote. I am the lawful

44 male descendant of a person who, prior to January 1st, 1868, would have been entitled to vote at a State Election in a State of the United States but for his race, color or previous condition of servitude and whose right to so vote was then and there denied by the said State on account of his race, color or previous condition of servitude and on account of no other matter or thing whatsoever.

I notify you that I believe and claim and am advised by counsel that so much of what purports to be section 4 of the Act of Assembly, first above mentioned, beginning in the fourth and ending in the seventeenth lines of page 348 of the printed volume, containing the Laws of Maryland, of 1908, as is in the words and figures following, that is to say:

"And who shall come within any one of the three following classes of male citizens: 1. All taxpayers of the City of Annapolis assessed on the city books for at least five hundred dollars. 2. And

duly naturalized citizens. 2½. And male children of naturalized citizens who have reached the age of 21 years. 3. All citizens who, prior to January 1, 1868, were entitled to vote in the State of Maryland or any other State of the United States, at a State Election, and the lawful male descendants of any person who, prior to January 1, 1868, was entitled to vote in this State or in any other State of the United States at a State Election. And no person not coming within one of the three enumerated classes shall be registered as a legal voter of the City of Annapolis, or qualified to vote at the municipal elections held therein."

is altogether null and void and of no effect in law, as affecting my rights in the premises, by reason of the Fifteenth Amendment to the Constitution of the United States, and of Section 2004 of the United States Revised Statutes, enacted under the authority conferred by Section 2 of the said Amendment, whereby it is provided that:

"All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial sub-division, shall be entitled and allowed to vote at all such elections, without distinction of race, color or previous condition of servitude; any constitution, law custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

I respectfully warn you that to refuse me registration as herein requested will deprive me of a right and privilege secured to me by the Constitution and Laws of the United States, and will render you, or such of you as shall join in such refusal, liable to me in a proper proceeding for redress.

I remain, gentlemen,

Yours very respectfully,
(Signed)

WILLIAM H. HOWARD.

Continuing his testimony witness said that the above paper had his signature attached, asked if anything was done by the defendants, after he gave them this paper, witness replied, that they informed him that he could not register. That when the paper was handed in at the time of witness' application for registration Mr. Myers used the words: "Here's another one of them." That the paper was placed by the officers of registration under a little piece of paper.

When witness made application for registration Mr. Kalmey and Mr. Myers, the defendants, conferred together and they decided witness could not register and there was nothing else said. Witness could not say whether or not Mr. Jones, the other officer of registration, voted the other way. There was no talk at all.

The plaintiff here offered in evidence the official register of voters for the third ward of the City of Annapolis, taken under the provisions of Chapter 525 of the Acts of Assembly of Maryland of 1908, which was admitted by the defendants to be the said official

register, the plaintiff's counsel offered and read therefrom the following entries;

46 "Residence, 59 North West St.; Postoffice address, Annapolis; surname, Howard, Christian name, William H.; sworn or affirmed, sworn; age, 35; nativity (place of birth), Maryland; color, colored; term of residence, precinct, 7 years; county, 35 years; state, 35 years; naturalized, —; can read, Yes; qualified voter, no; date of application, June 14th, 1909; signature, —; why disqualified, Acts of General Assembly of 1908, section 4, parts one and three."

It was further admitted by counsels for plaintiff and defendants that above record showed that the person referred to had not voted at any Municipal Election in the year 1909, it being further admitted that the book in question referred exclusively to municipal elections in the City of Annapolis, and not to national, state or county elections, and also that the registration was taken by the defendants, and Clarence M. Jones as officers of registration, appointed under the said Act, and that these entries are in the handwriting of the defendant, Charles E. Myers. The record also showing that the several entries, with the exception of the one indicating the cause of disqualification of the voter, had been run through in red ink; the general registration law of the State of Maryland, applicable to the registration of voters, and referred to in the Act of 1908, Chapter 525, requiring such crossing through in red ink to be made, when the applicant for registration is denied registration.

Witness further testified that he did not vote at any municipal election in the City of Annapolis in the year 1909, but that he applied to vote upon the day of such election, but after the officers of election looked at the book, and stated that witness's name did not appear as a registered voter of Annapolis upon said book, they denied witness the right to vote; that this was at the municipal election of July, 1909, which was under the special registration under the provisions of the Act of 1908, Chapter 525.

That witness, as is shown by the entries from the registration book, as herein referred to, voted at the elections in the autumn of 1909 and 1910, but that these elections were other than
47 municipal elections. That witness had voted at all municipal elections in the City of Annapolis from the time he was 21 years old until the municipal election of 1909, as well as at the State, County and National elections.

Mr. BONAPARTE: I think that is all Mr. Howard.

Mr. MARBURY: Just one thing Mr. Bonaparte, there is only one question I want to bring out—He was not a taxpayer to the extent of \$500.

Mr. BONAPARTE: He states that expressly in the written paper.

Mr. MARBURY: Are these facts true?

Mr. BONAPARTE: The facts stated in this written paper, which you served on the officers of registration are true, are they not?

WITNESS: They are, sir.

(No cross-examination. Examination concluded.)

It was then admitted by counsel for both plaintiff and defendants that Clarence M. Jones, the third officer of registration, voted in favor of the registration of the plaintiff, and that he was outvoted by the two defendants, who were the remaining officers of registration.

It was further admitted by counsel for the respective parties, that the plaintiff in this cause, was not a taxpayer in the City of Annapolis, assessed on the books for at least \$500, nor was he a duly naturalized citizen nor a male child of a naturalized citizen who had reached the age of 21 years, nor was he prior to January 1st, 1868, entitled to vote or descended from any person who was, prior to January 1st, 1868, entitled to vote in Maryland, or in any other state; and that the two defendants refused to register the plaintiff solely because he did not come within the enumerated classes mentioned in Section 4 of the Act of the General Assembly of 1908, Chapter 525, he being in other respects qualified.

It was also agreed between counsel for the respective parties that the Act, mentioned in the declaration, Chapter 525, of the Acts of 1908, was passed by the Legislature of Maryland, and was in due form, and that the copy of the same, filed with the declaration in this cause, is a correct copy of the said Act, and may be incorporated in the record.

It was also further agreed that the said Act may be read from the published laws of Maryland for 1908.

It was also further agreed that any of the Acts of the General Assembly of Maryland desired to be used in argument in this Court, or in the Supreme Court of the United States may be read from the published volumes of said Acts, and may be printed in the briefs of respective counsel.

It was also admitted by counsel for the respective parties that the father or a male ancestor of the plaintiff would have been entitled to vote in Maryland on the first day of January, 1868, but for the word "white" in the Constitution of Maryland at that time.

Whereupon, after the foregoing testimony and proceedings, which was all the testimony produced by the plaintiff, and all the proceedings occurring at the trial, the plaintiff rested, and the defendant having no testimony to offer and there being no evidence in rebuttal, both plaintiff and defendants closed their cases.

The plaintiff then offered the following prayer which was granted by the Court:

"The plaintiff prays the court to declare that if the court, sitting as a jury, find the facts stated in the plaintiff's declaration then its verdict must be for the plaintiff."

And the defendants, Charles E. Myers and A. Claude Kalmey, offered the following four prayers, all of which were refused by the Court.

First Prayer.

"The defendants pray the Court to instruct itself, sitting as a jury, that the plaintiff has offered no legally sufficient evidence in this cause to entitle him to recover and its verdict must be for the defendants."

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Second Prayer.

"The defendants pray the court to instruct itself, sitting as a jury, that there is no legally sufficient evidence in this case to show that the defendants failed to register the plaintiff on account of race, color or previous condition of servitude."

Third Prayer.

"The defendants pray the court to instruct itself, sitting as a jury, that Chapter 525 of the Acts of 1908 of the General Assembly of Maryland is a valid existing law, and that under the provisions thereof it was the duty of the defendants to refuse to register the plaintiff, as the uncontrodicted evidence in this case shows that the plaintiff was not qualified to register under the provisions of said law."

Fourth Prayer.

"The defendants pray the court to declare as the law of this case, as follows:

"First. The defendants, being officers of registration charged with duties of a judicial nature under the laws of the State of Maryland, are not liable in an action of this kind without the proof that they have acted in bad faith or maliciously in refusing to register the plaintiff.

"Second. In order to entitle the plaintiff to recover in this case, it must be shown that the defendants, in refusing to register the plaintiff, did so under the sanction and authority of the Act or Statute of the State of Maryland, mentioned in the declaration; to wit, the Act of 1908, Chapter 525, relating to Municipal Elections in the City of Annapolis, and inasmuch as said Act does not authorize or purport to authorize the defendants to refuse to register or permit to be registered the plaintiff on account of his race, color or previous condition of servitude, the plaintiff is not entitled to recover in this case.

"Third. The inhibitions contained in the 15th Amendment of the Constitution of the United States against the denial or abridgment of "the right of citizens of the United States to vote" on account of race, color or previous condition of servitude, have

50 reference only to the right to vote which citizens of the United States have as such, as distinguished from their right to vote as citizens of a state when they are citizens of a state; that is to say, the right to vote which they derive from the United States. A citizen of the United States, as such, has a right to vote for members of Congress, but he has not, as a citizen of the United States, a right to vote at elections for state officers, and in any event, he has

not, as a citizen of the United States, a right to vote at elections of municipal corporations created by the Legislature of a state.

"Fourth. If the 15th Amendment of the Constitution of the United States be construed to be applicable to the right to vote at elections for state officers or at elections of municipal corporations, created by the Legislature of a State, then said Amendment is void, and not a part of the Constitution of the United States, for the reason that it is in excess of the power of amendment conferred by Article V of the Constitution of the United States upon Congress and three-fourths of the Legislatures of the States."

And the defendants offered the following Special Exception to the plaintiff's prayer, which said special exception was overruled by the Court.

"The defendants object to the prayer offered by the plaintiff in this cause, but not for want of form, the necessity of setting forth in said prayer the detailed facts in the said several declarations being hereby waived.

"The defendants also specially except to said prayer on the ground that there is no evidence in this cause legally sufficient to sustain the said prayer of plaintiff."

And the court granted the plaintiff's prayer and refused and rejected the defendants' first, second, third and fourth prayers, and overruled the defendants' special exception to the plaintiff's prayer, and the defendants then and there asked leave to except and did except to each of the following rulings separately; to the granting by the court of the plaintiff's prayer; to the refusal of the court to grant the defendants' first prayer; to the refusal of the court to grant the defendants' second prayer; to the refusal of the court to grant the defendants' third prayer; to the refusal of the court to grant the defendants' fourth prayer; and to the refusal of the court to sustain the defendants' special exception to the plaintiff's prayer and the defendants pray the court to sign and seal this their first bill of exceptions, which is accordingly done this 11th day of May, 1911.

THOS. J. MORRIS, *Judge*. [SEAL.]

Approved on behalf of Pl'ff,

C. J. B.,
Pl'ff's Atty.

52 *Petition of Plaintiff for Writ of Error and Assignment of Errors.*

Filed May 17, 1911.

In the Circuit Court of the United States for the District of Maryland.

WILLIAM H. HOWARD

v.

CHARLES E. MYERS and A. CLAUDE KALMEY.

And now come Charles E. Myers and A. Claude Kalmey, defendants, in the above entitled case, and say:

That on or about the 6th day of February, 1911, the Circuit Court of the United States for the District of Maryland entered a judgment in said case in favor of the plaintiff, William H. Howard, and against these defendants, Charles E. Myers and A. Claude Kalmey, in which judgment, and the proceedings had prior thereto in said case, certain errors were committed to the prejudice of these defendants, all of which will more in detail appear from the assignment of errors, which is filed with this petition, and is intended to be taken as a part of the same.

Wherefore these defendants pray that a writ of error may issue in their behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this case duly authenticated may be sent to the Supreme Court of the United States.

WILLIAM L. MARBURY,
ISAAC LOBE STRAUS,
RIDGELY P. MELVIN,
WILLIAM L. RAWLS,
Attorneys for the Defendants.

53 In the Circuit Court of the United States for the District of Maryland.

WILLIAM H. HOWARD

v.

CHARLES E. MYERS and A. CLAUDE KALMEY.

Assignment of Errors.

The defendants in this action, in connection with their petition for writ of error, make the following assignment of errors, which they aver exist:

1. The court erred in failing and refusing to sustain the demurrer of these defendants to the declaration of the plaintiff filed in this cause.

2. The court erred in refusing to rule at the hearing upon the demurrer filed by these defendants to the declaration of the plaintiff in this cause, that the said declaration failed to show any ground of jurisdiction in this court over or in respect to the parties, matters and things set forth therein.

3. The court erred in refusing to rule at the hearing upon the demurrer filed by these defendants to the declaration of the plaintiff in this cause, that by the laws under which they, the defendants, were appointed and acting, the defendants were charged with and exercising, in respect to the transactions, matters and things complained of and set forth in said declaration, duties, functions and powers of a judicial nature, that in the discharge and exercise of said duties, functions and powers they, the defendants, were not and cannot be held legally responsible for anything more
54 than an honest and faithful exercise of their judgment, and that said declaration fails to allege that the defendants, or either of them, did, or failed to do, any act to the prejudice or injury of the plaintiff, either wilfully, maliciously, fraudulently or corruptly, so as to render them, or either of them, legally liable to the plaintiff in the premises.

4. The court erred in refusing to rule at the hearing upon the demurrer filed by the defendants to the declaration of the plaintiff in this cause, that, as the declaration charges on its face, the Act of the General Assembly of Maryland of 1908, Chapter 525, under which, as the declaration further avers, the defendants were appointed and acted, was and is illegal and unconstitutional and void, and the declaration fails to show that the defendants were authorized to register or charged with any duty of registering the plaintiff at the time he presented himself for registration, as set forth in said declaration, under any other statute or law; that, therefore, upon the averments and charges of the declaration the defendants had no authority, and were charged with no duty, to register the plaintiff when he presented himself to be registered, as set forth in the declaration, and, accordingly, are not liable to the plaintiff in the premises.

5. The court erred in refusing to sustain the demurrer filed by the defendants to the declaration of the plaintiff in this cause, because the defendants are not subject or liable to an action for damages for refusing to register the plaintiff under said Act of the General Assembly of Maryland of 1908, Chapter 525, which, as charged and shown by said declaration, forbade the defendants to register the plaintiff when he presented himself for registration, as set forth in said declaration, and which said Act, as appears from its context, imposed criminal penalties upon the defendants for any violation of its terms and provisions.

6. The court erred in refusing to sustain the demurrer filed by
55 the defendants to the declaration of the plaintiff in this cause, because said declaration fails to allege that the action of the defendants in refusing to register the plaintiff was wilful or malicious.

7. The court erred in refusing to sustain the demurrer filed by

the defendants to the declaration of the plaintiff in this cause, because the allegations contained in the declaration in this cause do not show a case where the State of Maryland, or any person acting under its authority, has denied or abridged the right of the plaintiff to register on account of race, color or previous condition of servitude.

8. The court erred in refusing to rule at the hearing upon the demurrer filed by the defendants to the declaration of the plaintiff in this cause, that the inhibitions contained in the Fifteenth Amendment against the denial or abridgment of the right of citizens of the United States to vote on account of race, color, or previous condition of servitude, is by the plain language of the Amendment made to apply only to the right to vote, which citizens of the United States have by virtue of such citizenship; that is, the right to vote derived from the United States and that the inhibitions therein contained do not apply to or in any way affect the right to vote conferred by a state upon any of its citizens.

9. The court erred in refusing to rule at the hearing upon the demurrer filed by the defendants to the declaration of the plaintiff in this cause that, allowing the broadest possible construction, the right of citizens of the United States to vote mentioned in the Fifteenth Amendment, which the States are thereby prohibited from denying or abridging, on account of race, color, or previous condition of servitude, is the right to vote at elections of a public, general character, and does not include the right to vote in corporate bodies created sole-y by legislative will, and wherein such right is dependent altogether upon legislative discretion as in municipal corporations.

56 10. The Court erred in refusing to rule at the hearing upon the demurrer filed by the defendants to the declaration of the plaintiff in this cause, that if construed to have reference to voting at State and Municipal elections the Fifteenth Amendment would be beyond the amending power conferred upon three-fourths of the States by Article V of the Constitution of the United States, and therefore the amendment should not receive that construction if it is fairly open to a more limited construction.

11. The court erred in holding, in its ruling upon the demurrer of the defendants to the declaration of the plaintiff filed in this cause, that any part of Section IV of the Act of Assembly of Maryland of 1908, Chapter 525, was and is in conflict with the Fifteenth Amendment of the Constitution of the United States.

12. The court erred in granting the plaintiff's first and only prayer, as follows: "The plaintiff prays the court to declare that if the court, sitting as a jury, find the facts stated in the plaintiff's declaration, then their verdict must be for the plaintiff."

13. The court erred in refusing to grant the defendants' first prayer, as follows: "The defendants pray the court to instruct itself, sitting as a jury, that the plaintiff has offered no legally sufficient evidence in this case to entitle him to recover and its verdict must be for the defendants."

14. The court erred in refusing to grant the defendants' second

prayer, as follows: "The defendants pray the court to instruct itself, sitting as a jury, that there is no legally sufficient evidence in this case to show that the defendants failed to register the plaintiff on account of race, color or previous condition of servitude."

15. The court erred in refusing to grant the defendants' third prayer, as follows: "The defendants pray the court to instruct itself, sitting as a jury, that Chapter 525 of the Acts of 1908 of the

57 General Assembly of Maryland is a valid existing law, and that under the provisions thereof it was the duty of the defendants to refuse to register the plaintiff, as the uncontradicted evidence in this case shows that the plaintiff was not qualified to register under the provisions of said law."

16. The court erred in refusing to grant the defendants' fourth prayer, as follows: "The defendants pray the court to declare as the law of this case, as follows:

"First. The defendants, being officers of registration, charged with the duties of a judicial nature under the laws of the State of Maryland, are not liable in an action of this kind without the proof that they have acted in bad faith or maliciously in refusing to register the plaintiff.

"Second. In order to entitle the plaintiff to recover in this case it must be shown that the defendants, in refusing to register the plaintiff, did so under the sanction and authority of the Act or the Statute of the State of Maryland, mentioned in the declaration; to wit, the Act of 1908, Chapter 525, relating to Municipal Elections in the City of Annapolis, and inasmuch as said Act does not authorize or purport to authorize the defendants to refuse to register or permit to be registered the plaintiff on account of his race, color or previous condition of servitude, the plaintiff is not entitled to recover in this case.

"Third. The inhibitions contained in the Fifteenth Amendment of the Constitution of the United States against the denial or abridgment of 'the right of citizens of the United States to vote' on account of race, color or previous condition of servitude, have reference only to the right to vote which citizens of the United States have as such, as distinguished from their right to vote as citizens of a state when they are citizens of a state; that is to say, the right to vote which they derive from the United States. A citizen of the United States,

as such, has a right to vote for members of Congress, but he
58 has not, as a citizen of the United States, a right to vote at elections for state officers, and in any event, he has not, as a citizen of the United States, a right to vote at elections of municipal corporations created by the Legislature of a state.

"Fourth. If the Fifteenth Amendment of the Constitution of the United States be construed to be applicable to the right to vote at elections for state officers or at elections of municipal corporations, created by the Legislature of a State, then said Amendment is void, and not a part of the Constitution of the United States, for the reason that it is in excess of the power of amendment conferred by Article V of the Constitution of the United States upon Congress and three-fourths of the Legislatures of the states."

17. The court erred in overruling the defendants' special exception to plaintiff's prayer, as follows: "The defendants object to the prayer offered by the plaintiff in this cause, but not for want of form, the necessity of setting forth in said prayer the detailed facts in the said several declarations being hereby waived.

"The defendants also specially except to said prayer on the ground that there is no evidence in this cause legally sufficient to sustain the said prayer of plaintiff."

18. The court erred in entering judgment in favor of the plaintiff and against the defendants.

Wherefore the defendants pray that the judgment of the said Circuit Court of the United States for the District of Maryland be reversed.

WILLIAM L. MARBURY,
ISAAC LOBE STRAUS,
RIDGELY P. MELVIN,
WILLIAM L. RAWLS,

Attorneys for Defendants.

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Order of Court Allowing Writ of Error.

Filed May 17, 1911.

In the Circuit Court of the United States for the District of Maryland.

WILLIAM H. HOWARD

v.

CHARLES E. MYERS and A. CLAUDE KALMEY.

This 17th day of May, 1911, the defendants, Charles E. Myers and A. Claude Kalmey, by their attorneys, file herein and present to the court their petition praying for the allowance of a writ of error and an assignment of errors intended to be urged by them, praying also that a transcript of the record, and proceedings and papers, upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the court does allow the writ of error upon the defendants' giving bond according to law in the sum of \$500.00 which shall operate as a supersedeas bond.

THOS. J. MORRIS, *Judge.*

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Writ of Error Bond.

Filed June 23, 1911.

Know all men by these presents, That we, Charles E. Myers and A. Claude Kalmey of Annapolis, Maryland, as principals, and Henry B. Myers and Joseph H. Bellis, also of said city and state,

as sureties are held and firmly bound unto William H. Howard in the full and just sum of Five Hundred Dollars, to be paid to the said William H. Howard certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 23rd day of June, in the year of our Lord one thousand nine hundred and eleven.

Whereas, lately at a Circuit Court of the United States for the District of Maryland, in a suit depending in said Court, between William H. Howard, plaintiff and Charles E. Myers and A. Claude Kalmey, defendants, a judgment was rendered against the said Charles E. Myers and A. Claude Kalmey and the said Charles E. Myers and A. Claude Kalmey having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said William H. Howard citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Charles E. Myers and A. Claude Kalmey shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

CHAS. E. MYERS.	[SEAL.]
A. C. KALMEY.	[SEAL.]
HENRY B. MYERS.	[SEAL.]
JOSEPH H. BELLIS.	[SEAL.]

Sealed and delivered in presence of
SARAH E. WOOLLEY.

Approved by—

THOS. J. MORRIS,

Judge U. S. Circuit Court for

District of Maryland.

61 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the Circuit Court of the United States for the District of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, or some of you, between William H. Howard, Plaintiff, and Charles E. Myers and A. Claude Kalmey, Defendants a manifest error hath happened, to the great damage of the said Charles E. Myers and A. Claude Kalmey as by their complaint appears. We being willing, that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do com-

mand you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 23rd day of June, in the year of our Lord one thousand nine hundred and eleven.

[The Seal of the Circuit Court, Maryland.]

ARTHUR L. SPAMER,
*Clerk of the Circuit Court of the United States
for the District of Maryland.*

Allowed by

THOS. J. MORRIS,

*Judge of the Circuit Court of the United
States for the District of Maryland.*

62 UNITED STATES OF AMERICA, ss:

To William H. Howard, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Circuit Court of the United States for the District of Maryland wherein Charles E. Myers and A. Claude Kalmey are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Thomas J. Morris, Judge of the Circuit Court of the United States for the District of Maryland this twenty third day of June, in the year of our Lord one thousand nine hundred and eleven.

THOS. J. MORRIS,
*Judge of the Circuit Court of the United States
for the District of Maryland.*

Attest:

[The Seal of the Circuit Court, Maryland.]

ARTHUR L. SPAMER,
Clerk of said Circuit Court.

Service of the within Citation admitted this 30th day of June 1911.

EDGAR H. GANS,
CHARLES J. BONAPARTE,
Attorney- for Defendant in Error.

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Order to Transmit Record.

In pursuance of the writ of error aforesaid, and according to the statute in such case made and provided, and of the order of court here, a record of the judgment aforesaid with all things thereunto relating, together with the said writ of error annexed is hereby transmitted to the said Supreme Court of the United States, accordingly.

Test:

ARTHUR L. SPAMER, *Clerk.*

Clerk's Certificate.

UNITED STATES OF AMERICA,

District of Maryland, To wit:

I, Arthur L. Spamer, Clerk of the Circuit Court of the United States for the District of Maryland, do certify that the foregoing is a true transcript of the record and proceedings of the said court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said Circuit Court, this 14th day of July, 1911.

[The Seal of the Circuit Court, Maryland.]

ARTHUR L. SPAMER, *Clerk.*

Endorsed on cover: File No. 22,807. Maryland C. C. U. S. Term No. 731. Charles E. Myers and A. Claude Kalmey, plaintiffs in error, vs. William H. Howard. Filed July 19th, 1911. File No. 22,807.